



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

BJG

Docket No: 1795-99

18 February 2000

[REDACTED]

Dear Lieuten[REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

Your request to file the concurrent fitness report for 3 February to 8 September 1997 in your naval record was not considered, since you have not exhausted your available administrative remedies in this regard. The attached memorandum dated 14 February 2000 from the Navy Personnel Command (NPC) indicates that the report must be endorsed by the Commanding Officer (CO), USS MONONGAHELA (AO-178). It is noted that the concurrent report could not properly be made a regular/concurrent report as you requested, even if the contested regular report for 21 September 1996 to 5 September 1997 were to be removed, because the last three days of the period of the concurrent report already are covered by the uncontested regular report from the USS MONONGAHELA (AO-178) beginning 6 September 1997; and the CO, USS MONONGAHELA (AO-178) was not your regular reporting senior for the entire period of the concurrent report. You may, if you wish, submit the concurrent report "as is" to future selection boards.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 17 February 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies. In addition, the Board considered the advisory opinions furnished by NPC dated 28 June, 29 July, 14 September, and 8 October 1999, copies of which are attached. They also considered your letters dated 17 April 1999 with enclosure, 12 October 1999 with enclosure, and 27 January 2000.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice. In this connection, the Board substantially concurred with the comments contained

in the advisory opinions dated 28 June, 29 July, and 14 September 1999 in finding that the contested regular fitness report should stand. They noted that your regular reporting senior could have taken into account information from your concurrent reporting senior, concerning your performance at your temporary additional duty command, without having received the concurrent fitness report (which was not submitted until 17 September 1997, after the contested regular report had been submitted on 5 September 1997). They did agree with the comments, in the advisory opinion dated 8 October 1999, to the effect that your substandard performance was not entirely your responsibility. However, they did not find that this established an injustice warranting removal of the contested fitness report, which they believed accurately documented your performance. In view of the above, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER  
Executive Director

Enclosures

1795-99

1610  
PERS-311  
14 Feb 00

## MEMORANDUM

From: PERS-311

To: Board for Correction of Naval Records (BCNR)

Subj: REGULAR REPORTING SENIOR SIGNATURE AUTHORITY ICO LT  
[REDACTED], USNR, [REDACTED] CONCURRENT FITNESS  
REPORT FOR THE PERIOD 97FEB03-97SEP08

Ref: (a) PHONECON between Mr. Jon Ruskin, BCNR and [REDACTED] PERS-311 of 14 Feb 00  
(b) Fax from MR. Jon Ruskin, BCNR of 14 Feb 00

1. Reference (a) requested a PERS-311 determination on Regular Reporting Senior signature authority on a Concurrent fitness report written on [REDACTED] USN, 228-11-9986/1117 for the period 97FEB03 - 97SEP08.
2. Reference (b) provided the Regular fitness report written by [REDACTED] Commanding Officer, USS MONONGAHELA(AO-178) for the reporting period 97SEP06 - 98OCT31. Reference (b) also provided the Concurrent report for the period 97FEB03-97SEP08. The Concurrent report has [REDACTED] Commanding Officer, USS KAUFMAN(FFG-59), typed in Block 47 for Regular Reporting Senior Concurrence.
3. Based on the end date of the Concurrent Report and the beginning date of the Regular Report, [REDACTED] is the Regular Reporting Senior for Concurrence on the Concurrent Report not CDR [REDACTED]. PERS-311 has no basis to question the end date of the Concurrent report. Any extenuating circumstances that existed which did not allow [REDACTED] to transfer on 5SEP97 are not known. PERS-311 will not question the integrity of [REDACTED], the Concurrent Reporting Senior, who stated in the report that the report was submitted on the occasion of LT Hale's transfer to the USS MONONGAHELA.



**DEPARTMENT OF THE NAVY**  
**NAVY PERSONNEL COMMAND**  
**5720 INTEGRITY DRIVE**  
**MILLINGTON TN 38055-0000**

1610  
PERS-311  
28 June 1999

**MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF  
NAVAL RECORDS**

Via: PERS/BCNR Coordinator (PERS-00XCB)

Subj: LT [REDACTED], USNR [REDACTED]

Ref: (a) BUPERSINST 1610.10, EVAL Manual

Encl: (1) BCNR File

Enclosure (1) is returned. The member requests the removal of his fitness report for the period 21 September 1996 to 5 September 1997 and replace it with a concurrent report for the period, 3 February 1997 to 8 September 1997, changing it to a regular report vice a concurrent report, and correct his record to indicate no fitness report was required for the period 21 September 1996 to 2 February 1997.

2. Based on our review of the material provided, we find the following:

a. A review of the member's headquarters record revealed the fitness report in question to be on file. It is signed by the member acknowledging the contents of the report and the member's rights in accordance with reference (a). The member's statement and first endorsement is filed in the member's record.

b. Review of the original fitness report for the period 21 September 1996 to 5 September 1997 revealed a regular, detachment of individual report. The report is a fully graded report signed by the reporting senior and the member. The report appears to be procedurally correct.

c. The concurrent fitness report for the period 3 February 1997 to 8 September 1997 was received by NPC-311. However, the report was not suitable for filing because it was not submitted in accordance with reference (a), Annex E, paragraph E-6, the regular reporting senior signature was missing. Although the member was TAD during part of the reporting period, he is still attached to his permanent command. We did not contact the reporting senior since the material in the member's petition indicate the regular reporting senior is aware of the concurrent fitness report.

d. Lieutenant [REDACTED] the fitness report was issued in retaliation because the reporting senior's request for the member's detachment for cause (DFC) was disapproved. Although the

DFC was disapproved, the reporting senior may properly comment or assign grades based on performance of duty or events which led up to the request for DFC.

e. The member request to correct his record to indicate no fitness report was required for the period 21 September 1996 to 2 February 1997. We cannot administratively change the member's record as requested. To do so would mean a gap in the member's record for the period in question. To maintain continuity, all periods of active duty must be accounted for.

f. Failure of selection or enhancement of promotion opportunity does not justify removal of a fitness report.

g. The member does not prove the report to be unjust or in error.

3. We recommend the member's record remain unchanged.

4. We recommend the member's petition be returned via the Director, Equal Opportunity Division (PERS-61) for comments on the member's allegation of retaliation. Should the member's allegation be found to have merit, we have no objection to change or removal of the fitness report in question. We also recommend the member's petition be forwarded to the Director, Active Officer Promotions, Appointments and Enlisted Advancements Division (PERS-85) for comments on the member's request to remove his failure of selection.



Head, Performance  
Evaluation Branch



## DEPARTMENT OF THE NAVY

**BUREAU OF NAVAL PERSONNEL  
5720 INTEGRITY DRIVE  
MILLINGTON TN 38055-0000**

1611  
Ser 834C/1280  
29 Jul 99

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF  
NAVAL RECORDS

Via: Assistant for BCNR Matters, NPC-00ZCB

Subj: LT [REDACTED] USNR, [REDACTED]

Ref: (a) BCNR memo 5420 Ser Pers-00ZCB dtd 23 Jul 99  
(b) Fitness report for period 96SEP21 to 97SEP05  
(c) CO, USS KAUFMANN (FFG 59) ltr 1300 Ser 00/027  
of 4 Feb 97  
(d) MILPERSMAN 1611-020  
(e) PERS-311 memo 1610 Ser PERS-311 dtd 28 Jun 99

Encl: (1) BCNR file 01795-99 w/service record

1. Reference (a) requested an advisory opinion in response to L██████████ request to remove reference (b), an adverse report of fitness, from his officer permanent personnel record. Enclosure (1) is returned as a matter under the purview of BCNR.
2. Reference (b) was submitted subsequent to the disapproval of reference (c), a request to detach ██████████ for cause (DFC). ██████████ felt that the extremely adverse remarks in reference (b) constitute reprisal for the disapproved DFC.
3. Reference (d) states that material relating to a DFC may not be referenced in fitness reports until a final decision is made. As the DFC was disapproved, and (correctly) no reference to the DFC was made in the fitness report, we defer to PERS-3's opinion expressed in reference (e) concerning the commanding officer's comments and removal of the fitness report from ██████████ record.

Captain, U.S. Navy  
 Director  
 Personnel Performance & Security  
 Division



**DEPARTMENT OF THE NAVY**

**NAVY PERSONNEL COMMAND  
5720 INTEGRITY DRIVE  
MILLINGTON TN 38055-0000**

1795-99  
1610  
PERS-61/103  
14 Sep 99

MEMORANDUM FOR EXECUTIVE DIRECTOR, BOARD FOR CORRECTION  
OF NAVAL RECORDS

Via: Assistant for BCNR Matters, Pers-00ZCB

Subj: REQUEST FOR COMMENTS AND RECOMMENDATIONS IN CASE OF  
LIEUTENANT [REDACTED] USNR, [REDACTED]

Ref: (a) BCNR memo 5420 Ser Pers-00ZCB of 23 Jul 99  
(b) OPNAVINST 5354.1D Navy EO Manual

Encl: (1) BCNR File 01795-99 w/Service Record

1. Reference (a) requested an advisory opinion in response to [REDACTED] request to remove a fitness report for the period 21 September 1996 to 5 September 1997. He alleges that the grades and narrative in the fitness report are retaliatory and not reflective of his true performance. Enclosure (1) is returned.
2. [REDACTED] claims that the Commanding Officer was biased against him because he was a TAR officer and had been out of the Navy for five years before returning to active duty and being assigned to the USS KAUFFMAN as the Operations Officer. The Commanding Officer had requested that [REDACTED] be Detached For Cause (DFC) because he had lost confidence in his ability to serve as the operations officer. The DFC was not approved; however, it was recommended that [REDACTED] be transferred early from the USS KAUFFMAN.
3. [REDACTED] alleges that the detaching fitness report was retaliatory in nature and he provided a large amount of documentation to attempt to support his case. Although the DFC was disapproved, the 15 May 97 endorsement by Commander, Naval Surface Force, U.S. Atlantic Fleet suggested that he supported the Commanding Officer's opinion that [REDACTED] did not possess the necessary fleet experience to serve as operations officer.
4. The detaching fitness report obviously reflected the opinions toward [REDACTED] expertise and performance as a Surface

Subj: REQUEST FOR COMMENTS AND RECOMMENDATIONS IN CASE OF  
LIEUTENANT [REDACTED] USNR, [REDACTED]

Warfare Officer, which is the Commanding Officer's prerogative.  
It is my opinion the fitness report is not retaliatory in nature  
per reference (b) and I recommend it be retained in his service  
record.

[REDACTED]  
Director, Professional  
Relationships Division  
(PERS-61)



1795-99



**DEPARTMENT OF THE NAVY**  
**NAVY PERSONNEL COMMAND**  
**5720 INTEGRITY DRIVE**  
**MILLINGTON TN 38055-0000**

5420  
PERS-86  
08 OCT 99

MEMORANDUM FOR EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF NAVAL  
RECORDS

Via: Assistant for BCNR Matters (PERS-00ZCB)

Subj: REQUEST FOR COMMENT AND RECOMMENDATIONS ICO LIEUTENANT  
[REDACTED] USNR [REDACTED]

Encl: (1) BCNR File 01795-99 w/Service Record

1. We are returning enclosure (1) with the following observations and recommendations.
2. The FY-99 and FY-00 Naval Reserve Lieutenant Commander Promotion Selection Boards properly considered [REDACTED] although he was not selected by either board. Specific reasons for the failures of select are not available since selection board proceedings are sensitive in nature and records of deliberations are not kept. A review of the record reveals that the record was essentially complete when reviewed by the selection boards. Included in the record was the fitness report in question. It is our opinion that the report and the related correspondence are significantly detrimental to [REDACTED] promotion potential.
3. In order to frame our opinion, we review the matters of record:
  - a. [REDACTED] served in only one afloat sea tour prior to release from active duty in January of 1991. This sea tour was aboard an amphibious transport ship, in the engineering department instead of a tour aboard a combatant ship serving in the operations or combat systems department. [REDACTED] served only 17 months as division officer at sea.
  - b. After release from active duty [REDACTED] served as a Selected Reserve performing the following non-combat related duties: 1<sup>st</sup> LT, training officer, and mobilization officer.

c. [REDACTED] requested selection for the Training and Administration of Reserves (TAR) Officer program. He was selected for the TAR program, as a result of board action, and was returned to active duty in November of 1995 after more than five and half-year's absence from afloat duties.

d. Upon returning to active duty, [REDACTED] received orders to Department Head School, and was assigned to complete the Combat Systems Officer Course. Upon completion of Department Head School, [REDACTED] was assigned to an operational combatant ship as the Operations Officer instead of the Combat Systems Officer.

4. In reviewing the documents pertaining to the detachment for cause action we find the forwarding endorsement by the Commander, Naval Surface Force, U.S. Atlantic Fleet to be particularly noteworthy. In that document the Admiral states that, "LT Hale should not shoulder all the responsibility for his performance shortcomings". In this case we are dealing with an officer whose detachment for cause has been specifically disapproved by the Chief of Naval Personnel and, the endorsement by the officer's senior operational commander states that the responsibility for the situation does not lie entirely with the officer in question, because the officer "lacked the expertise necessary to succeed in this challenging department head assignment".

5. We concur with the above in regards to the fact that the officer was placed on an operational ship at sea, in a position of significant leadership requiring extensive at-sea experience in order to perform successfully, without the requisite experience or training. We agree that the fitness report instruction properly allows for the inclusion of performance remarks, as is the proper procedure in the case of officers who have had routine and usual career development. In such a case (B) it would be appropriate to record sub-standard performance even if the case did not result in DFC. However, [REDACTED] did not have the benefit of usual career development, due to the five-year gap as a civilian, and therefore was not qualified to serve in the duties assigned. Under the ship's operational demands, it is easy to understand why the Commanding Officer requested detachment of [REDACTED]. However, we are of the opinion that if the responsibility is not to be placed entirely on [REDACTED] then any reference to substandard performance, relief of duties, or other remarks and comments which might be made by a reporting senior, should be specifically precluded from the record.

(B)

